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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**JANELL RENE BUTLER,**

Case No. 3:17-cv-00135-HZ

Plaintiff,

v.

**DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES**

**OREGON HEALTH & SCIENCE  
UNIVERSITY; and KATHRYN SCHABEL,**

***DEMAND FOR JURY TRIAL***

Defendants.

Defendants Oregon Health & Science University ("OHSU") and Kathryn Schabel (collectively "Defendants") respond as follows to the allegations in plaintiff's Amended Complaint.

1.

Defendants admit that Dr. Schabel performed a knee replacement surgery on plaintiff on July 28, 2014 at OHSU. Defendants further admit that Dr. Schabel was an employee of OHSU at all times relevant to the Amended Complaint.

2.

Defendants deny the remainder of the allegations in plaintiff's Amended Complaint. Additionally, Defendants specifically deny all allegations of medical malpractice and failure to obtain informed consent. Defendants deny each and every allegation of tortious conduct.

### **AFFIRMATIVE DEFENSES**

#### **Tort Claim Notice**

3.

Plaintiff failed to provide timely tort claim notice of this action as required by O.R.S. 30.275.

#### **Statute of Limitations**

4.

Plaintiff has failed to file this action within the applicable statute of limitations.

#### **Improper Service**

5.

Plaintiff has failed to properly serve Defendants with copies of the summons and complaint.

#### **Lack of Subject Matter Jurisdiction**

6.

Plaintiff cites 45 CFR 690 as the basis for federal question jurisdiction in this case.

7.

The cited regulation does not confer a private right of action.

8.

The cited regulation promulgated by the National Science Foundation has no factual connection to this case.

9.

The Court lacks subject matter jurisdiction.

WHEREFORE, having fully answered the plaintiff's Amended Complaint, Defendants request that plaintiff's claim be dismissed, that judgment be entered in their favor, and for an award of their costs and disbursements.

Dated this 19<sup>th</sup> day of May, 2017.

LINDSAY HART, LLP

By: *s/ Katie M. Eichner*  
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017 I served a copy of **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES** on the following person in the manner indicated below at the following address:

Janell Rene Butler  
P.O. Box 151  
Cornelius OR 97113

Plaintiff Pro Se

- ☐ by Electronic Mail
- ☐ by Facsimile Transmission
- ☒ by First Class Mail
- ☐ by Hand Delivery
- ☐ by Overnight Delivery

*s/ Katie M. Eichner*

By: \_\_\_\_\_  
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